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In re Application of
Mordechai M. Beizer, et al.
Application No. 09/136,244
Filed: August 19, 1998
For: STRUCTURED WORKFOLDER

:
:
: **DECISION ON PETITION**
: **TO WITHDRAW THE**
: **HOLDING OF ABANDONMENT**

This is in reply applicants' Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on October 1, 2004.

The petition is **DISMISSED**.

A review of the file record reveals that an Office action was mailed to applicants on January 31, 2003. Since a response was not received before the expiration of the six-month statutory period for reply, the application was held abandoned, and a Notice to that effect was mailed on September 20, 2004. While it appears, as petitioner notes, that an incorrect date for the mailing date of the Final Rejection was entered on the Notice of Abandonment, this error has no bearing on the abandonment of the present application.

Petitioner contends that the January 31, 2003 Office action was not received. In support thereof, petitioner submits, *inter alia*, "a copy of the mail log where the non-received Office communication would have been entered had it been received." In addition, petitioner states, "Applicant's attorney learned in a telephone interview, on October 7, 2003 with the Examiner that, in fact, the Final Action was never mailed from the USPTO and the mail envelope and Final Action were still in the USPTO File Wrapper."

Initially, it should be noted that the application file wrapper has been reviewed and the above-noted Final Action and mail envelope have not been located.

There is a strong presumption that an Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of April 30, 2003. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 OG 53 (November 16, 1993). The petitioner has failed to comply with requirement (3) indicated above.

The docket record submitted by petitioner is that of a mail log of incoming mail. This showing is insufficient to satisfy requirement (3), and grant the petition to withdraw the holding of abandonment. To satisfy requirement (3) above, petitioner must provide a docket record showing all responses due by petitioner's firm, at and around the due date of April 30, 2003.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



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RAR/rwg: 6/10/05